

# BakerHostetler

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September 7, 2023

**VIA ECF**

Honorable Cecelia G. Morris  
United States Bankruptcy Court  
Southern District of New York  
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*Re: Picard v. Legacy Capital Ltd. Adv. Pro. No. 10-05286 (CGM) (Bankr. S.D.N.Y.) and  
Picard v. Mayer et al. (In re BLMIS), Adv. Pro. No. 20-01316 (CGM) (Bankr. S.D.N.Y.)*

Dear Judge Morris:

We represent Irving H. Picard, the trustee (“**Trustee**”) for the liquidation of Bernard L. Madoff Investment Securities LLC (“**BLMIS**”) and the substantively consolidated estate of Bernard L. Madoff in the above-referenced matters. The Trustee respectfully requests that the Court convene a conference on his application for an 18-month extension of fact discovery, and that such conference be scheduled as soon as practicable. This is the first request for an extension of discovery deadlines. Under Local Rule 7007-1 and Your Honor’s Chambers Rules, enclosed is a declaration certifying that the Trustee conferred with Legacy Capital Ltd. (“**Legacy**”), Rafael Mayer, David Mayer, Prince Resources, Prince Capital, and Khronos Liquid Opportunities Fund (“**KLOF**” and collectively, the “**Defendants**”), who have declined to consent to the requested extension, and providing a status report on discovery. The declaration further sets forth the history of discovery in this case.

## **I. Case Background**

On July 2, 2015, the Trustee filed an amended complaint against Legacy, *Picard v. Legacy Capital Ltd.*, Adv. Pro. No. 10-5286, ECF No. 112, for the avoidance and recovery of fraudulent transfers from BLMIS. On November 11, 2020, the Trustee filed a complaint against the remaining Defendants to recover the Legacy transfers. *Picard v. Mayer (In re BLMIS)*, Adv. Pro. No. 20-1316, ECF No 1. On April 25, 2022, the Court consolidated discovery on the issue of “good faith” for the two adversary proceedings.<sup>1</sup> The parties engaged in fact discovery, which is set to close on December 22, 2023 pursuant to the Second Amended Stipulated Case Management Order, entered on June 13, 2022 (the “**CMO**”).<sup>2</sup> The CMO further provides that the parties may serve document requests and subpoenas by September 22, 2023. (CMO ¶ 3(g)).

<sup>1</sup> Order Granting In Part and Denying In Part The Trustee’s Motion To Consolidate, Adv. Pro. No. 10-05286 (CGM) (Bankr. S.D.N.Y. April 25, 2022), ECF No. 269.

<sup>2</sup> Second Amended Stipulated Case Management Order (Bankr. S.D.N.Y. June 13, 2022), *Picard v. Legacy Capital Ltd.*, Adv. Pro. No. 10-05286 (CGM) (Bankr. S.D.N.Y. June 13, 2022), ECF No. 270; See also Case Management

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## **II. There is Good Cause for the Trustee's Application for an Extension of Time**

Requests to modify the CMO must be made to this Court. (CMO ¶ 11). On August 7, 2023, the Trustee contacted Defendants seeking consent to extend discovery deadlines. On August 18, 2023, the Trustee and the Defendants, other than KLOF, met and conferred to discuss the Trustee's request. On August 21, 2023 the Trustee wrote to Defendants setting forth the bases for an 18-month extension and noting that the Trustee intended to make an application before Your Honor should the parties fail to reach an agreement. At 4:00pm on August 31, 2023, Legacy rejected the Trustee's proposal. Although Legacy represented that Defendants' "good faith" document productions would not be complete at least until the end of November (which the Trustee regards as unlikely given Defendants obstruction to date), Legacy offered a mere 45-day extension. At 9:01am on September 1, 2023, Legacy sent a letter to Judge Maas, seeking to raise the parties' dispute concerning the discovery schedule. Legacy was aware of the Trustee's impending application to modify the CMO before Your Honor.

Courts grant requests to extend discovery if "good cause" exists.<sup>3</sup> The Trustee served the Defendants with Document Requests on January 23, 2023. The Trustee has received only limited productions from Legacy, Rafael Mayer, KLOF, Prince Resources, and Prince Capital. As a result, no depositions have been scheduled. Legacy waited until the end of April 2023 to employ an e-discovery vendor. After Legacy claimed its own search terms were too burdensome and refused to review post-2008 ESI, Legacy rejected the Trustee's protocol to shift the burden and cost of review to the Trustee. Legacy did not begin "good faith" discovery productions until June 30, 2023. To date, David Mayer has not produced any documents and KLOF has produced a mere 66 documents. The Trustee served comprehensive discovery deficiency letters and raised issues concerning preservation and production deficiencies. It is anticipated that the parties will be working through these issues well into the fall, including by raising these discovery disputes with Judge Maas.

Third-party discovery is also delayed and related foreign discovery concerning BNP Paribas's documentation in Ireland may be required. Furthermore, the Trustee intends to subpoena a number of service providers whose roles have been recently clarified through Legacy's document production, further implicating foreign discovery.

As previously stated by Your Honor, "the Trustee was never a party to the original fraud and so bears the burden of having to figure out what happened after the fact. And that may be something that Defendants who lived through the allegation time framing real time are not burdened with and he needs to have that knowledge and I will not rush discovery."<sup>4</sup> Accordingly, the Trustee respectfully requests that the Court schedule a conference on the Trustee's application for an 18-month extension of the fact discovery deadline (June 23, 2025).

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Plan (Bankr. S.D.N.Y. August 23, 2022), *Picard v. Mayer et al (In re BLMIS)*, Adv. Pro. No. 20-01316 (CGM) (Bankr. S.D.N.Y. August 23, 2022), ECF No. 124.

<sup>3</sup> See FED. R. CIV. P. 16(b)(4) (as incorporated by FED. R. BANKR. P. 7016).

<sup>4</sup> Transcript regarding hearing held on 7/28/2021 at 37:17-24, *Picard v. Square One Fund Ltd.*, Adv. Pro. No. 10-04330 (CGM) (Bankr. S.D.N.Y.).

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Respectfully submitted,

*/s/ Jason S. Oliver*

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